**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| **IN RE: AVANDIA MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION** | : | **MDL No. 1871**<br>**07-md-01871** |
| **THIS DOCUMENT APPLIES TO: ALL ACTIONS** | : | |

**PRETRIAL ORDER NO. 50**

**AND NOW**, this 27th day of February 2009, upon consideration of the Fourth Report and Recommendation ("R&R") of the Special Discovery Master [Doc. No. 351], which addresses procedures to govern situations in which a plaintiff fails to complete the approved Plaintiff Fact Sheet ("PFS") according to its instructions in a timely manner, and after a conference held today with representative counsel for the parties in which the parties requested that the R&R be approved and adopted by the Court, it is hereby **ORDERED** that R&R is **APPROVED AND ADOPTED** and that the following procedures apply in the aforementioned circumstances:

**Dismissal Procedure and Sanctions for a Plaintiff's Failure to Provide a Complete and Accurate Plaintiff's Fact Sheet**

1. The following, all of which are required by Pretrial Order No. 7 and the Plaintiff Fact Sheet ("PFS"), shall be considered threshold criteria ("the Threshold Criteria") for purposes of this Order:

   (a) Full name of person who used Avandia, Avandamet, and/or Avandaryl (including all names by which the person went during or since any use of the products);

   (b) Date of birth of person who used Avandia, Avandamet, and/or Avandaryl;

   (c) Social Security number of person who used Avandia, Avandamet, and/or Avandaryl;

(d) Full address of person who used Avandia, Avandamet, and/or Avandaryl;

(e) Full name and full address of Avandia, Avandamet, and/or Avandaryl Prescriber(s) (including suite number, if any) and any physician who treated plaintiff's injury;

(f) Full name and full address (including suite number, if any) of Avandia, Avandamet, and/or Avandaryl Sample Provider(s) (if any);

(g) Name and full address of any pharmacy that dispensed Avandia, Avandamet, and/or Avandaryl to the person who used Avandia, Avandamet, and/or Avandaryl;

(h) Dates of plaintiff's Avandia, Avandamet, and/or Avandaryl usage (month/year started to month/year stopped);

(i) Type of injury claimed by plaintiff (death, ischemic-related cardiac event, stroke, macular edema, bone fractures, other (please specify));

(j) Date (month and year) of plaintiff's injury; and

(k) Fully executed Authorizations for the release of plaintiff records for each healthcare provider required to be identified.

2. To the extent that any item in Paragraph 1 is inapplicable to a plaintiff, or a plaintiff does not possess the information requested by Paragraph 1, plaintiff shall make a definitive statement that such information is either not applicable or not known, and such responses shall be treated as answers to interrogatories under Fed. R. Civ. P. 33.

3. Upon receipt of a PFS, GSK may send by email and first class mail a written notice to plaintiff's counsel enumerating any deficiencies in plaintiff's response to the PFS and authorizations ("Deficiency Notice"). GSK shall clearly distinguish between Threshold Deficiencies (incomplete or insufficient responses regarding the Threshold Criteria outlined in Paragraph 1, above) and Non-Threshold Deficiencies (incomplete or insufficient responses for all other parts of the PFS). Total failure to provide a PFS on a timely basis shall be deemed a Threshold Deficiency and shall warrant the generation of a Deficiency Notice.

4. Procedure for Threshold Deficiencies.

(a) Plaintiffs shall have thirty (30) days from receipt of a Deficiency Notice to cure any Threshold Deficiencies by supplementing the PFS and furnishing any missing authorizations.

(b) If a plaintiff fails to cure any Threshold Deficiencies in the manner described hereinabove, then in accordance with this Order and sanctions allowable under Fed. R. Civ. P. 37, GSK may file a motion to dismiss without prejudice, without further notice to plaintiff's counsel. Plaintiff shall have twenty (20) days from the filing of the motion to dismiss to file its opposition. Any such opposition must include a certification that the plaintiff has served upon counsel for GSK a PFS containing the Threshold Criteria (and all the required authorizations identified in its instructions), and must attach appropriate documentation demonstrating such service. Absent such opposition, or other good cause shown, GSK's motion to dismiss without prejudice shall be granted.

5. Procedure for Non-Threshold Deficiencies

(a) For any Non-Threshold deficiencies enumerated by GSK in a Deficiency Notice, the parties shall meet and confer in an attempt to resolve these issues informally. In the event the parties are unable to resolve these issues informally, GSK may file a Motion to Compel seeking a more definitive answer to the Non-Threshold Deficiencies. If the Court grants GSK's motion to compel in whole or in part, Plaintiff shall comply. If plaintiff fails to comply with the order granting the Motion to Compel, GSK may file a motion for appropriate sanctions, including dismissal of the case without prejudice.

6. GSK may file a motion to convert any dismissal without prejudice to a dismissal with prejudice on twenty (20) days notice to plaintiff's counsel. Plaintiff shall have twenty (20) days from the filing of the motion to dismiss to file its opposition. No other extensions will be granted, except on good cause shown. Absent good cause shown, and pursuant to the Court's authority to order appropriate sanctions under Fed. R. Civ. P. 37, the Court shall dismiss plaintiff's case with prejudice for failure to provide a Complete and Accurate Fact Sheet in the manner set forth hereinabove.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

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**CYNTHIA M. RUFE, J.**